

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 01-455-A
)	
ZACARIAS MOUSSAOUI)	
a/k/a "Shaqil,")	
a/k/a "Abu Khalid)	
al Sahrawi,")	
)	
Defendant.)	

ORDER

The defendant, pro se, has filed three motions demanding that Charles Freeman, Esquire be permitted to provide him with out-of-court legal assistance (Docket #s 248, 262 and 271); and has repeated this request as part of at least four other pleadings (Docket #s 241, 257, 261, and 288).¹ In addition, Mr. Moussaoui has filed several pleadings in which he repeatedly conveys his vehement objection to the appointment of standby counsel (Docket #s 233, 248, 256, and 261); and has included this complaint in portions of other motions (Docket #s 235, 257, and 287).

Having exercised his Sixth Amendment right to represent himself, the defendant is not entitled to the standby or

¹On July 9, 2002, the court received an "affidavit" from Charles Freeman stating that although he refused to enter his appearance in the case, he is "out-of-court advisory counsel for Bro. Zacarias Moussaoui." Because Mr. Freeman is not qualified to file any pleadings in this case, the Affidavit has been stamped "received" and will not be addressed by the Court.

"advisory"² counsel of his choice - particularly if the proposed lawyer is unwilling to enter a formal appearance and be bound by the rules of this court. See United States v. Singleton, 107 F.3d 1091, 1102-03 (4th Cir. 1997)(finding that a pro se defendant does not have a right to an intermediate accommodation such as "advisory" counsel); Laremont-Lopez v. Southeastern Tidewater Opportunity Project, 968 F. Supp. 1075, 1079 (E.D. Va. 1997)(condemning an attorney for ghost-writing pleadings on behalf of a pro se civil litigant without entering an appearance because such conduct violated Local Rule 83.1 in that it prevented the court from "fairly and efficiently" administering the litigation).

Neither Mr. Moussaoui nor Mr. Freeman has offered any meaningful or relevant distinction between "standby" and "advisory" counsel. If Mr. Freeman, or any other practicing attorney, seeks to assist the defendant in a standby capacity, including providing out-of-court advice, that attorney must enter a formal appearance in this case pursuant to Local Rule 83.1.³ Because Mr. Freeman has consistently declined to comply with Local Rule 83.1(D), the defendant's motions requesting that Mr. Freeman be permitted to provide him with out-of-court legal

² See supra fn 1.

³ An attorney not licensed to practice in the Commonwealth of Virginia may appear in this Court if he or she joins with local counsel who moves to have the foreign attorney admitted before this court pro hac vice pursuant to Local Rule 83.1.(D).

assistance (Docket #s 248, 262 and 271); as well as those portions of other motions requesting the same (Docket #s 241, 257, 261 and 288) are DENIED.

Because of the complexity of the charges filed against Mr. Moussaoui, his exposure to the death penalty if convicted of any of Counts I through IV, the extensive amount of classified discovery which the defendant is not eligible to review, and the Special Administrative Measures imposed by the Department of Justice, the Court has exercised its discretion to appoint qualified standby counsel in this case. See McKaskle v. Wiggins, 465 U.S. 168, 178-79 (1984); United States v. Gallop, 838 F.2d 105, 110 (4th Cir. 1988). The need for standby counsel is further justified by the nature of the pleadings the defendant has been filing pro se. It is painfully obvious that the defendant does not comprehend significant aspects of federal criminal law such as the meaning of a nolo contendere plea, the secret nature of grand jury proceedings, and how to file appropriate motions. The quantity and quality of the defendant's pleadings strongly reinforce our conclusion that standby counsel must remain in this case. For these reasons, the defendant's repetitive motions to dismiss standby counsel docketed as #s 233, 248, 256, and 261, as well as those portions of pleadings docketed as #s 235 and 257 that request the removal of standby counsel are DENIED.

After the defendant orally moved on April 22, 2002 to

proceed pro se, there was an extensive exchange of pleadings which made clear that the attorney-client relationship between the defendant and his original court-appointed counsel, Edward M. MacMahon and attorneys from the Office of the Federal Public Defender, including Frank W. Dunham, Jr., the Federal Public Defender, had disintegrated. When the Court determined that the defendant was mentally competent to waive counsel and understood the consequences of the waiver, we anticipated appointing new qualified lawyers to act as standby counsel so that the defendant would have access to competent legal advice and assistance if he sought such advice or assistance. We also recognized that in such a complex case, with a fast-approaching trial date, there should not be a break in the discovery production while new counsel were identified. With these concerns, we immediately released only Mr. MacMahon, a solo practitioner, and replaced him with another solo practitioner, Alan Yamamoto, who has extensive experience with federal death penalty litigation and has recently served as standby counsel to a pro se defendant in a capital case. We hoped to replace the Federal Public Defender, who has committed over ten staff members to this case, with a medium to large law firm with sufficient staff to handle such a complex case. Until such a replacement firm could be found, the Federal Public Defender was kept in the case as co-standby counsel to Mr. Yamamoto.

Unfortunately, it is now obvious that no attorney appointed

by the Court will satisfy the defendant. He has vehemently and categorically refused to meet with or even accept communications from Mr. Yamamoto. It is also clear that no law firm with the resources and experience equivalent to those of the Federal Public Defender is willing to enter the case. Even if such a firm came forward at this point, we have no reason to conclude that the defendant would accept that firm's services. Because the Court must ensure that the defendant has an opportunity for a fair trial, we have determined that the best available standby legal counsel for the defendant is the Federal Public Defender in conjunction with experienced additional counsel. Given the mass of discovery material and the number of potential legal issues which need to be addressed, the continued appointment of Mr. Yamamoto as well as the reappointment of Mr. MacMahon, who is willing to be reappointed, will best serve the interests of justice. For these reasons, defendant's Motion to Respect Her Own Word (Docket #287) is DENIED, and it is hereby

ORDERED that Edward MacMahon be and is reappointed pursuant to 18 U.S.C. §§ 3005 and 3006(A) to serve as one of the defendant's standby counsel, along with the Federal Public Defender and Mr. Yamamoto.

The defendant is again advised that he should reconsider his refusal to communicate with these lawyers, who are poised to help him obtain experts, locate witnesses and even provide the paper supplies he needs to mount his defense. The defendant's continued

unreasonable refusal to interact with standby counsel is only hurting his defense.

The Clerk is directed to forward copies of this Order to defendant, pro se; counsel for the United States; standby defense counsel; and the Court Security Officer.

Entered this 11th day of July, 2002.

/s/

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia